

PART 6 - EXHIBIT C

CAPITAL INVESTMENT RECOVERY

This exhibit to this concession contract establishes certain terms and conditions of the concession contract regarding the nature, scope, and applicable conditions of concessionaire CIR. In the event of any inconsistency between this exhibit and this concession contract, this exhibit shall prevail.

A. OBTAINING A CAPITAL INVESTMENT RECOVERY

Title to all capital improvements made by concessionaires shall be vested in the United States. However, concessionaires shall have a right to reimbursement for a portion of their investments in capital improvements. That reimbursement right shall be called CIR. The concessionaire will obtain CIR only in capital improvements constructed in accordance with the terms and conditions of this concession contract, including, without limitation, the terms and conditions of this exhibit C, Exhibit H: Improvement Project Procedures, and Exhibit K: Reserve Account for Facilities Improvements to the concession contract.

B. AUTHORIZING THE CONSTRUCTION OF A CAPITAL IMPROVEMENT

Reclamation may authorize or require the concessionaire to construct capital improvements on area lands only in accordance with the terms and conditions of this concession contract and as necessary for the conduct, by the concessionaire, of authorized or required visitor services. Any capital improvements owned by the concessionaire outside area lands, whether used by the concessionaire in the conduct of operating the concession or not, are not covered by this concession contract and do not qualify for CIR.

C. REQUIREMENTS FOR BEGINNING TO CONSTRUCT A CAPITAL IMPROVEMENT

Before beginning to construct any capital improvement, the concessionaire must obtain written approval from Reclamation in accordance with the terms of this concession contract, including the terms and conditions of this exhibit C, exhibit H, and exhibit K. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that Reclamation may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total

construction cost must specify all elements of the cost in such detail as is necessary to permit Reclamation to determine that they are construction costs related to the improvement defined in this exhibit.

(The approval requirements of this and other sections of this concession contract also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures and non-removable equipment as described in this concession contract.)

D. REQUIREMENTS AFTER SUBSTANTIAL COMPLETION OF A CAPITAL IMPROVEMENT

Upon substantial completion of a capital improvement in which the concessionaire is to obtain a CIR, the concessionaire must provide Reclamation a detailed construction report in accordance with the terms and conditions of this concession contract, including, without limitation, this exhibit C, exhibit D, and exhibit H. The construction report must be supported by actual invoices demonstrating the cost to construct the improvement and, if requested by Reclamation, a written certification from a certified public accountant. The construction report must document, and any requested certification by the CPA must certify, that all components of the construction cost were incurred by the concessionaire in accordance with generally accepted auditing standards and that all components are eligible for direct or indirect construction costs as defined in this concession contract. Invoices for additional construction costs related to elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to Reclamation as part of a request for the inclusion of those costs in the determination of the concessionaire's CIR in the subject improvement.

E. DETERMINING CONSTRUCTION COSTS FOR PURPOSES OF CAPITAL INVESTMENT RECOVERY VALUE

After receiving the detailed construction report (and CPA certification, if requested) from the concessionaire, Reclamation will review the report, certification, and other information, as appropriate, to determine if the reported construction cost is consistent with the construction cost approved by Reclamation in advance of the construction and that all costs included in the construction cost are eligible for direct or indirect costs as defined in this concession contract. The construction cost determined by Reclamation will be the construction cost for the purposes of calculating the CIR value in the related capital improvement. Reclamation may at any time review a construction cost determination (subject to arbitration under section 6 of this exhibit C) if Reclamation has reason to believe that it was based on false, misleading, or incomplete information.

F. ARBITRATING THE CONSTRUCTION COST OF A CAPITAL IMPROVEMENT

If the concessionaire requests arbitration of the construction cost of a capital improvement determined by Reclamation, the request must be made in writing to Reclamation within 3 months of the date of Reclamation's determination of construction cost under section 5 of this exhibit C. If a timely request is not made, Reclamation's determination of construction cost under section 5 shall be the final determination of the construction cost. The arbitration procedures are described in the definitions section of the main body of the concession contract. The decision of the Arbitration panel as to the construction cost of the capital improvement will be nonbinding. Reclamation shall make the final, unchallengeable determination.

G. ACTIONS THE CONCESSIONAIRE MAY OR MUST TAKE REGARDING CAPITAL INVESTMENT RECOVERY

The concessionaire:

1. May encumber a CIR in accordance with the terms of this concession contract.
2. Where applicable, must transfer its CIR in connection with any assignment or expiration of this concession contract.
3. May waive or relinquish a CIR.

H. EXTINGUISHMENT OF A CAPITAL INVESTMENT RECOVERY

A CIR may not be extinguished by the expiration of this concession contract, and assets in which a concessionaire holds a CIR may not be taken for public use except upon payment of just compensation for the value of that CIR at the time of such concession contract expiration or taking and in compliance with Public Law 96-375 Sec. 5.b (see Sec. 5.A of this contract for wording on this law). Payment of CIR value pursuant to the terms of this concession contract will constitute the payment of just compensation for CIR within the meaning of this concession contract and for all other purposes.

I. CAPITAL INVESTMENT RECOVERY UNDER A SUBSEQUENT

CONCESSION CONTRACT IF THE CONCESSIONAIRE IS AWARDED THE SUBSEQUENT CONCESSION CONTRACT

If the concessionaire under this concession contract is awarded the subsequent concession contract by Reclamation and the subsequent concession contract provides for continued concessionaire use of an improvement for which the concessionaire holds a CIR, the concessionaire's CIR value in that improvement (established as of the date of expiration of this concession contract) will be the initial value of the concessionaire's CIR in that improvement under the new concession contract. Public Law 96-375 will continue to be applicable in this and future contracts operating in any one or more of the original seven (7) concession locations at Lake Berryessa.

J. CAPITAL INVESTMENT RECOVERY UNDER A NEW CONCESSION CONTRACT IF THE CONCESSIONAIRE IS NOT AWARDED THE NEW CONCESSION CONTRACT

1. If the concessionaire under this concession contract is not awarded a new concession contract after normal expiration of this concession contract, the concessionaire is entitled to be compensated the full value of the CIR pursuant to the terms of this concession contract and in compliance with PL 96-375.
2. Under such circumstances, the concessionaire will not relinquish the CIR until the concessionaire is paid the full value of the facilities designated to remain calculated as of the date of expiration of this concession contract and pursuant to the terms of this concession contract.
3. The date for payment of the CIR value, except in special circumstances beyond Reclamation's control, will be the date of expiration of this concession contract.
4. In the event that there is no succeeding concessionaire and extraordinary circumstances beyond the control of Reclamation prevents Reclamation from fully compensating the concessionaire for the CIR due the concessionaire for qualifying facilities on the date of expiration of this concession contract, the concessionaire shall be paid simple interest on any outstanding unpaid CIR until such time the concessionaire has been fully compensated for that CIR. The annual rate of interest will be the prime rate as of the date of expiration of this concession contract plus 200 basis points. This rate of interest will apply to any CIR for which the concessionaire has not been compensated for a period of up to 1

year after the expiration of this concession contract. If the concessionaire is not fully compensated for its CIR within 1 year after the expiration of this concession contract, the annual rate of interest on any outstanding unpaid CIR will be increased an additional 200 basis points plus any increase in the prime rate during that time. If the prime rate decreases during this 1-year period, the interest rate will be adjusted only for an increase of 200 basis points. This new rate of interest will apply during the period beginning 1 year after the expiration of this concession contract and continue indefinitely until such time that the concessionaire has been fully compensated for its CIR as of the date of expiration of this concession contract and pursuant to the terms of this concession contract.

K. PAYMENT OF CAPITAL INVESTMENT RECOVERY BY A SUBSEQUENT CONCESSION CONTRACTOR

If the subsequent concession contract is awarded to a contractor other than the concessionaire, the subsequent contractor will be required to pay the concessionaire its applicable CIR value, for facilities designated by Reclamation to continue in use as per PL 96-375, in exchange for obtaining CIR's in those improvements.

L. RIGHTS TO CAPITAL INVESTMENT RECOVERY PRIOR TO CONCESSION CONTRACT EXPIRATION

If, under the terms of this concession contract, Reclamation removes, causes to be removed, or causes the concessionaire to cease using an improvement in which the concessionaire holds a CIR and these actions are required due to no fault of the concessionaire the concessionaire will be entitled to receive compensation from Reclamation for its CIR value in that improvement as of the date of such removal or cessation of use, subject to otherwise applicable terms and conditions of this concession contract.

M. LOSS OF RIGHTS TO CAPITAL INVESTMENT RECOVERY IF IN DEFAULT OF CONCESSION CONTRACT

In the event that this concession contract is terminated because of concessionaire default on the concession contract, the concessionaire shall lose all rights to CIR and, therefore, will not receive compensation for its previous rights to CIR. In the event of the expiration of an alternate term as a result of failure to complete the concession Facilities Improvement Program,

the concessionaire shall forfeit, and not receive any compensation for, any CIR rights.

N. DETERMINING CAPITAL INVESTMENT RECOVERY VALUE

The amount of compensation due the concessionaire for its CIR will be Fair Market Value as determined by the Cost Approach Method of appraisal and in compliance with Public Law 96-375.

In the event that the concessionaire and Reclamation cannot reach an agreement as to the CIR value where required by the terms of this concession contract, the CIR value will be determined by arbitration, upon request of the concessionaire or Reclamation. The arbitration procedures are described in the “Definition” section of the concession contract.

O. OBTAINING ADDITIONAL CAPITAL INVESTMENT RECOVERY BY UNDERTAKING AN IMPROVEMENT OR ADDING TO A STRUCTURE

If an improvement funded by the concessionaire with the written approval of Reclamation represents an improvement (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the concessionaire already has a CIR, the concessionaire will increase its CIR in the related capital improvement, effective as of the date of substantial completion of the improvement. Approvals for improvements to structures are subject to the same requirements and conditions applicable to new construction as described in this concession contract.

P. OBTAINING ADDITIONAL CAPITAL INVESTMENT RECOVERY BY REPLACING A FIXTURE IN WHICH THE CONCESSIONAIRE HAS A CAPITAL INVESTMENT RECOVERY

If the concessionaire replaces an existing fixture in which the concessionaire has a CIR with a new fixture, the concessionaire will increase its CIR by the amount of the approved construction cost of the replacement fixture less the CIR of the replaced fixture at the time of the replacement.

Q. OBTAINING A CAPITAL INVESTMENT RECOVERY IN EXISTING IMPROVEMENTS IN WHICH NO CAPITAL INVESTMENT RECOVERY FORMERLY EXISTED

1. If the main body of this concession contract requires the concessionaire to replace fixtures in real property improvements in which there is no CIR (e.g., fixtures attached to an existing Government facility assigned by Reclamation to the concessionaire), a CIR will be obtained by the concessionaire in such replacement fixtures subject to the approval and determination of construction cost and other conditions contained in this concession contract.
2. If the main body of this concession contract requires the concessionaire in the Concession Facilities Improvement Program to undertake and fund an improvement of a structure in which there is no CIR (e.g., a Government-constructed facility assigned to the concessionaire), the concessionaire will obtain a CIR in the structure improvement upon substantial completion of the pre-approved improvement. The initial construction cost used in determining this CIR will be the construction cost of the improvement. Depreciation and adjustment for inflation for purposes of CIR values will apply only to the improvement components of the related structure paid for by the concessionaire.

R. NO CAPITAL INVESTMENT RECOVERY OBTAINED FROM REPAIR AND MAINTENANCE OF REAL PROPERTY IMPROVEMENTS

The concessionaire will not obtain CIR for expenditures made to repair or maintain improvements that would be the usual routine responsibility of the concessionaire. Routine repair and maintenance shall be any repair and maintenance that is performed normally more than once during a 7 year time period. The concessionaire may seek to obtain CIR in pre-approved maintenance and repair projects that it funds that do not reoccur within a 7 year time period.

S. CAPITAL INVESTMENT RECOVERY TO BE AVAILABLE FOR USE OF FUNDS FROM THE CONCESSIONAIRE'S RESERVE ACCOUNT FOR FACILITIES IMPROVEMENTS

The concessionaire shall be entitled to obtain CIR for pre-approved real property improvements made with concessionaire funds, including funds the concessionaire deposited into the RAFI, described in exhibit K of this concession contract. Monthly deposits to the RAFI account will be recorded as an asset on the concessionaire's balance sheet.

T. CAPITAL INVESTMENT RECOVERY AS OF THE EFFECTIVE DATE OF THIS CONCESSION CONTRACT

The concessionaire's CIR in real property improvements, if any, as of the effective date of this concession contract, is as follows:

Building Number: _____

Description: _____

CIR Value: _____

[NOTE: In some instances this could be a lengthy list depending upon the specific proposal from individual bidders. If there are no improvements retained for use into this contract term, this concession contract should say "NONE."]

Exhibit C Approved Effective: _____

UNITED STATES OF AMERICA

CONCESSIONAIRE

By: _____

By: _____

Area Manager, Bureau of Reclamation

Title: _____